

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Guam Cellular and Paging, Inc. d/b/a Saipancell)	
Petition for Designation as an Eligible)	DA 02-510
Telecommunications Carrier on the Island of)	
Saipan in the Commonwealth of the Northern)	
Mariana Islands)	

OPPOSITION OF THE MICRONESIAN TELEPHONE COMPANY

I. Introduction and Summary

Saipancell's petition to be designated as an Eligible Telecommunications Carrier ("ETC") and to disaggregate the Micronesian Telephone Company's ("MTC's") service area is flawed, inconsistent with the Act, and should be dismissed. First, contrary to Saipancell's claim, the commission in the Commonwealth of the Northern Mariana Islands ("CNMI") that regulates telecommunications carriers has explicit statutory authority to designate wireless carriers as ETCs, even though it does not otherwise regulate such carriers. As a result, under the Act, this request must be brought to the state commission, because this Commission has authority to designate ETCs only where the state does not. Second, Saipancell's additional request to disaggregate MTC's service area does not show that the regulatory commission has proposed such disaggregation and does not include the order giving its reasons, as required under the Commission's rules. Therefore, that request is also flawed and should be dismissed. Third, the request to disaggregate does not even meet two of the three criteria for such disaggregation that

Saipancell cites as controlling, so the request is substantively flawed and should be denied on the merits.

II. The CNMI Commission Has Authority To Review Wireless ETC Requests, and Saipancell Must Bring Its Request There.

Under the Act, state commissions, not the FCC, designate ETCs. *See* 47 U.S.C. § 214(e)(2) (“A State commission shall ... designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier”). The only exception is when a common carrier is not subject to the jurisdiction of a state commission for this purpose, in which event, to avoid giving a carrier no place to turn, Congress gave this Commission authority to designate ETCs. *See* 47 U.S.C. § 214(e)(6). Here, Saipancell claims that the regulatory commission in the CMNI lacks jurisdiction to designate commercial mobile radio service (“CMRS”) providers as ETCs. Petition at 3-4. Saipancell is wrong, and this petition should be dismissed as filed in the wrong forum.

Saipancell’s initial petition supported its claim by attaching a letter from the CNMI Commonwealth Utilities Corporation (“CUC”) stating that that the CUC does not regulate CMRS services and, therefore, does not object to Saipancell bringing this application before the federal government. *Id.* at Exh. A. After it discovered that authority over telecommunications was removed from the CUC in early 2001 and given to a newly created Commonwealth Telecommunications Commission (“CTC”), Saipancell amended its petition on April 15, 2002. In that amendment, Saipancell provided a letter from the Governor of the CNMI stating that the CTC “does not regulate commercial mobile radio and paging services.” Letter dated April 9, 2002, from Juan N. Babauta, Governor, CNMI to the General Manager of Saipancell Communications. That, however, begs the question.

The issue is not whether the CTC regulates CMRS providers but whether it is authorized to grant ETC status to such providers. And the statute which granted CTC authority to regulate telecommunications in the CNMI gives it *explicit* authority to decide whether to grant ETC status to CMRS carriers:

Section 8325. Determination of Eligible Carrier Status – Universal Service Support.

- (1) The Commission is authorized to designate telecommunications carriers as eligible for Federal Universal Service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, and for any CNMI universal service funds. This authorization applies to all telecommunications carriers *notwithstanding the carrier's exemption from further regulation by the Commission.*

CNMI Public Law 12-39, Section 8325 (signed Feb. 23, 2001) (emphasis added), available at <http://cnmilaw.org/html/page/hpg43.htm>. Therefore, by statute, the CTC, the telecommunications regulatory commission for the CNMI, has authority to designate ETCs, both wireline and wireless. As a result, under section 214(e)(2) of the Telecommunications Act, Saipancell is obligated to bring its request before the CTC, not this Commission.

III. Saipancell's Request To Disaggregate MTC's Service Area Must Also Be Filed With The CTC.

Likewise, under applicable law, Saipancell's request to disaggregate MTC's service area must be filed in the first instance with the CTC. Saipancell here asks the Commission to redefine the service area of MTC so that Saipancell may be designated as an ETC only on the island of Saipan without serving the two smaller islands of Rota and Tinian that MTC also serves. Petition at 10-15. It purports to justify filing its request before this Commission by citing section 54.207(c)(1) of the Commission's rules, which states that "[a] state commission or other party" may submit a petition to have a carrier's service area redefined. *Id.* at 12. What Saipancell fails

to point out is that that same rule defines a carrier's service area as "a geographic area *established by a state commission* for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a) (emphasis added).

Additionally, under the rules, a carrier's service area is the same as the carrier's study area unless the study area is redefined. *See* 47 C.F.R. § 54.207(b). Here, Saipancell asks only that MTC's service area be redefined, and makes no showing as to why it should not be the same as its study area, as required under section 54.207(c)(1) of the rules. This is because the Commission may consider allowing the service area to differ from the study area upon petition only "[i]f a *state commission* proposes to define a service area ... to be other than such company's study area." 47 C.F.R. § 54.207(c). Here, the state commission has made no such proposal.

Moreover, although the rules permit a party other than the state commission to petition this Commission to change the service area, under the rules, any such petition must contain:

- (i) The definition *proposed by the state commission*; and
- (ii) The *state commission's ruling* or other official statement presenting the state commission's reasons for adopting its proposed definition.

47 C.F.R. § 54.207(c)(1) (emphasis added). Here, Saipancell has not included any CNMI commission order or other document proposing to change MTC's service area, because the issue has not even been presented to the CTC. Nor does Saipancell attempt to justify its failure to take the issue to the proper body before coming to this Commission – it simply ignores the rule.

Its only argument is that CMRS providers are not regulated in the CNMI. *See* Petition at 3 and Exh. A. However, as shown above, the CTC does have authority to designate such providers as ETCs. But, in any event, this request is to redefine *MTC's* service area, not Saipancell's, and there can be no question that the CTC has authority to regulate MTC.

IV. Revision Of MTC's Service Area Would Not Be In The Public Interest.

Saipancell's petition would have to be denied as inconsistent with the public interest in any event. The request does not even meet two of the three criteria – established by the Federal-State Joint Board for states considering redefining carriers' service areas – which Saipancell itself cites as applying to this type of petition. *See* Petition at 13-14, citing *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 87 (1996). The first criterion is whether the competing carrier is attempting to “cream skim” by serving only the lowest-cost areas. Petition at 13. Saipancell claims that it is proposing to serve only its own cellular coverage area, Saipan. *Id.* at 11. However, it also says that it is licensed to serve all of the North Mariana Island RSA, which includes all three of the islands, *id.* at 1, but has not chosen to do so. MTC currently provides service to all three islands.

From the information Saipancell itself provides, it is apparent that it is far less costly for it to serve customers on Saipan than on Tinian and Rota. Saipan has 90% of the population of the three islands, *id.* at 13, and is the business center for the three.¹ Although Tinian and Rota are each smaller in area than Saipan, the total area of the two exceeds that of Saipan, even though they have only 10% of the population. *See* CNMI Guide, *available at* <http://www.cnmi-guide.com/info>. Saipancell would probably need more cell sites to serve those two islands than to serve Saipan. Therefore, by choosing to serve primarily Saipan, Saipancell is clearly offering service in only the lowest-cost exchanges and to the more lucrative business customers, *i.e.*, cream skimming.

This is consistent with MTC's experience. Because of the low population and lack of significant population concentrations, MTC's cost per loop on Tinian and Rota is significantly

¹ Tinian and Rota are largely agricultural.

higher than on Saipan. As a result, the per-line amount of universal service support to keep rates at reasonable levels on the smaller islands is considerably above the support needed for each line in Saipan.

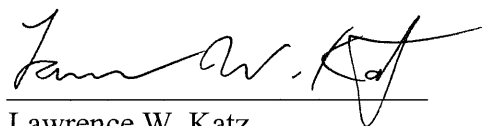
Even if it is uneconomic for it to build new cell sites immediately to serve Tinian and Rota, Saipancell could serve those two islands by reselling MTC's service until it expands its own plant. Saipancell has made no attempt to show why that solution would not enable it to serve the population MTC currently serves at little or no additional cost. By using resale, Saipancell can serve its entire authorized area, and its request to change MTC's service area would be unnecessary.

The petition also fails to satisfy the second criteria Saipancell cites, that is that any redefinition of service areas must take into account the rural carrier's "special status" under the Act. Petition at 13. The petition then goes on to discuss Saipancell's "special status," which has no relevance here. Saipancell itself states that it is not a rural carrier. *Id.* at 10 ("Saipancell is not a 'rural telephone company'"). Instead, it is MTC's status that must be shown to be "special," because it is MTC's service area that Saipancell wants changed. MTC has invested in facilities to serve not just the Saipan, but smaller islands of Tinian and Rota as well, an investment that Saipancell appears to be trying to avoid making. Saipancell has not attempted to show any "special status" on the part of MTC, the only rural carrier in question, that warrants revising the service area.

V. Conclusion

Accordingly, the Commission should dismiss Saipancell's petition as filed in the wrong forum or deny it on the merits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

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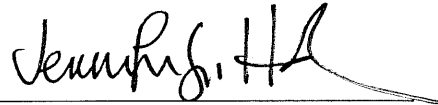
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April 22, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2002, copies of the forgoing "Opposition of the Micronesian Telephone Company" were sent by first class mail, postage prepaid, to the parties listed below.



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